
TITLE 326 AIR POLLUTION CONTROL DIVISION

Proposed Rule
LSA Document #22-109**DIGEST**

Adds [326 IAC 8-8.2](#) to incorporate 40 CFR 62, Subpart OOO for municipal solid waste landfills into state rules, and includes federal amendments to 40 CFR 62, Subpart OOO published in the Federal Register on February 14, 2022. Repeals [326 IAC 8-8](#) and [326 IAC 8-8.1](#). Effective 30 days after filing with the Publisher.

HISTORY

Findings and Determination of the Commissioner Pursuant to [IC 13-14-9-7](#) and Second Notice of Comment Period: April 6, 2022, Indiana Register (DIN: [20220406-IR-326220109FDA](#)).

Notice of First Hearing: April 6, 2022, Indiana Register (DIN: [20220406-IR-326220109PHA](#)).

Date of First Hearing: June 8, 2022.

PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on April 6, 2022, at DIN: [20220406-IR-326220109FDA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from April 6, 2022, through May 6, 2022, on IDEM's draft rule language. IDEM received comments from the following party:

United States Environmental Protection Agency (U.S. EPA)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: U.S. EPA has concerns that the rule language in [326 IAC 8-8.2](#) may be confusing to facilities and the public as written. U.S. EPA feels that the date of the July 1, 2021, edition of the Code of Federal Regulations (CFR) could be misread as referring to the date that the final rule promulgating 40 CFR Part 62, Subpart OOO (86 FR 27756) was published in the Federal Register. Additionally, the reference to "as amended by 87 FR 8203" can be confusing, because this final rule was published on February 14, 2022, which is after the July 1, 2021, edition of the CFR that the rule language references. U.S. EPA suggests the following rule language revision to Section 1(a):

"Except as provided in subsection (b) of this rule, the owner or operator of an existing municipal solid waste landfill (MSWLF) that commenced construction on or before July 17, 2014, and has not been modified or reconstructed since July 17, 2014, must comply with this rule, the May 21, 2021, version of 40 CFR 62, Subpart OOO (86 FR 27756), and the February 14, 2022, amendments to 40 CFR Part 62, Subpart OOO (87 FR 8203)."

Response: IDEM appreciates U.S. EPA's submitted comment. However, citing the July 1, 2021, edition of the CFR for purposes of incorporation by reference is consistent with existing rule drafting standards established by Indiana's Legislative Services Agency, as well as existing citations for incorporation by reference throughout the rest of the Articles in Title 326. IDEM has not historically received comments from sources or the public stating that this style of citation in the rule language is confusing or misleading and should be changed. Therefore, the citations in this rule language have not been changed.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 8, 2022, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of repealing [326 IAC 8-8](#) and [326 IAC 8-8.1](#), adding a new rule at [326 IAC 8-8.2](#) to incorporate 40 CFR 62, Subpart OOO for municipal solid waste landfills into state rules, and including federal amendments to 40 CFR 62, Subpart OOO published in the Federal Register on February 14, 2022. No comments were made at the first hearing.

[326 IAC 8-8](#); [326 IAC 8-8.1](#); [326 IAC 8-8.2](#)

SECTION 1. [326 IAC 8-8.2](#) IS ADDED TO READ AS FOLLOWS:

Rule 8.2. Federal Standards Applicable to Certain Municipal Solid Waste Landfills

[326 IAC 8-8.2-1](#) Adoption of federal standards applicable to certain municipal solid waste landfills

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-14](#)

Affected: [IC 13-12](#)

Sec. 1. (a) Except as provided in subsection (b), the owner or operator of an existing municipal solid waste landfill that commenced construction on or before July 17, 2014, and has not been modified or reconstructed since July 17, 2014, must comply with this rule and the July 1, 2021, edition of 40 CFR 62, Subpart 000*, as amended by 87 FR 8203*.

(b) The following authorities are not delegated to the state:

- (1) Approval of alternative methods to determine the nonmethane organic compounds concentration or a site-specific nonmethane generation rate constant k as provided in 40 CFR 62.16718(a)(5).
- (2) Alternative emission standards.
- (3) Major alternatives to test methods or monitoring that make modifications to a federally enforceable test method or to a federal monitoring requirement. These changes may involve the use of unproven technology or modified procedures or an entirely new method.
- (4) Waiver of record keeping.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 8-8.2-1](#))

SECTION 2. THE FOLLOWING ARE REPEALED: [326 IAC 8-8](#); [326 IAC 8-8.1](#).

[Notice of Public Hearing](#)

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